

REMARKS

Reconsideration of this application is respectfully requested.

Claims 59-67 were rejected under 35 U.S.C. 102(e) for allegedly being anticipated by Eaton et al., U.S. Patent Application No. 2002/119130 A1, published August 29, 2002. The Office contends that this application has an effective filing date of October 29, 1997. Applicant traverses the rejection.

The effective U.S. filing date assigned to this application by the Office is in error. Eaton et al. was filed December 6, 2001, and claims priority to a multitude of U.S. provisional applications. Only five of these applications were filed prior to Applicant's June 1, 1998, filing date. However, none of these applications disclose the sequence of IL-1 delta DNA. Copies of these applications are attached as Exhibits A-E for the Examiner's convenience.

Appln. 60/063,435 (Exhibit A), filed on October 29, 1997, discloses DNA and amino acid sequences of a nucleic acid termed "PRO295" in Figure 1-B and Figure 2, respectively. As can be seen from Exhibit A, these sequences are not IL-1 delta sequences.

Appln. 60/064,215 (Exhibit B), filed on October 29, 1997, discloses DNA and amino acid sequences of a nucleic acid termed "PRO263" in Figure 1A-B and Figure 2, respectively. As can be seen from Exhibit B, these sequences are not IL-1 delta sequences. Consequently, Eaton et al. does not have an effective filing date of October 29, 1997, with respect to Applicant's claimed invention.

Appl. 60/082,797 (Exhibit C), filed on April 22, 1998, discloses DNA and amino acid sequences of a nucleic acid termed "PRO300" in Figure 1 and Figure 2,

respectively. As can be seen from Exhibit C, these sequences are not IL-1 delta sequences. Consequently, Eaton et al. does not have an effective filing date of April 22, 1998, with respect to Applicant's claimed invention.

Appln. 60/083,495 (Exhibit D), filed on April 29, 1998, discloses DNA and amino acid sequences of a nucleic acid termed "PRO218" in Figure 1A-B and Figure 2, respectively. As can be seen from Exhibit D, these sequences are not IL-1 delta sequences. Consequently, Eaton et al. does not have an effective filing date of April 29, 1998, with respect to Applicant's claimed invention.

Appln. 60/085,579 (Exhibit E), filed May 15, 1998, discloses DNA and amino acid sequences of a nucleic acid termed "PRO1031" in Figure 1A-B and Figure 2, respectively. As can be seen from Exhibit E, these sequences are not IL-1 delta sequences. Consequently, Eaton et al. does not have an effective filing date of May 15, 1998, with respect to Applicant's claimed invention.

Since Eaton et al. does not claim priority to any other application prior to Applicant's June 1, 1998, filing date, Eaton et al. is not effective prior art under 35 U.S.C. 102(e) to Applicant's claims. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Claims 59-67 were rejected under 35 U.S.C. 102(e) for allegedly being anticipated by two U.S. Patents to Ford et al., U.S. Patent Nos. 6,337,072 and 6,541,623. The Office contends that these patent have an effective U.S. filing date of May 20, 1998. Applicant traverses the rejection.

Applicant submits herewith a Declaration under 37 C.F.R. § 1.131 providing evidence that the claimed invention was conceived and reduced to practice prior to May

15, 1998. Consequently, Applicant has sworn behind filing the May 20, 1998, filing date assigned to the two patents of Ford et al. by the Office.

Nonetheless, as Applicant discussed with the Examiner during a telephone conference on June 12, 2006, at least, claims 1, 5, 12-14, 24, 26, and 30-37 of U.S. Patent 6,337,037 and claims 1-3 of U.S. Patent 6,541,623 recite SEQ ID NO:4, which the Office has alleged is 100% identical to Applicant's claimed IL-1 delta sequence. (Office Action at 3.) Thus, Applicant believes that the current application claims the same invention as claims 1, 5, 12-14, 24, 26, and 30-37 of U.S. Patent 6,337,037 and claims 1-3 of U.S. Patent 6,541,623. Applicant further believes that an interference is the only way to resolve the first inventor of this subject matter. Applicant was informed by the Examiner that Applicant could respond to the current rejection over the two Ford et al. patents by filing a Declaration under 37 C.F.R. § 1.131, and that the Examiner would then review the claims of the two Ford et al. patents to determine if Applicant was claiming the same invention as these two patents.

The Examiner is invited to call the undersigned to discuss any outstanding issues remaining in this application in order to expedite prosecution.

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Respectfully submitted,

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